

## **Exhibit A**

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Sep 25, 2007 4:04 PM

KIRI TORRE

Chief Executive Officer

Superior Court of CA, County of Santa Clara

Case #1-07-CV-095007 Filing #G-5202

By A. Floresca, Deputy

KINGSLEY & KINGSLEY, APC  
GEORGE R. KINGSLEY, ESQ. SBN-38022  
ERIC B. KINGSLEY, ESQ. SBN-185123  
eric@kingsleykingsley.com  
DARREN M. COHEN, ESQ. SBN-221938  
16133 VENTURA BL., SUITE 1200  
ENCINO, CA 91436  
(818) 990-8300, FAX (818) 990-2903

SPIRO MOSS BARNES  
IRA SPIRO, ESQ. SBN-67641  
ira@spiroboss.com  
GREGORY N. KARASIK, ESQ. SBN-115834  
11377 W. OLYMPIC BL., 5TH FLOOR  
LOS ANGELES, CA 90064  
(310) 235-2468; FAX (310) 235-2456

CHARLES JOSEPH, ESQ. FED BAR #CJ-9442  
JOSEPH & HERZFELD LLP  
757 THIRD AVENUE, 25TH FLOOR  
NEW YORK, NY 10017  
(212) 688-5640; FAX (212) 688-2548  
Seeking Admission Pro Hac Vice

GILLESPIE, ROZEN, WATSKY & JONES, P.C.  
JAMES A. JONES  
jaj@grwlawfirm.com  
3402 OAK GROVE AVE., SUITE 200  
DALLAS, TX 75204  
(214) 720-200; Fax (214) 720-2291  
Seeking Admission Pro Hac Vice

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA CLARA**

RAMONA RIVERA, on behalf of  
herself and others  
similarly situated,

Plaintiffs,

v.

SCHERING-PLOUGH CORPORATION;  
and DOES 1 to 50, Inclusive,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Overtime
2. Violation of Labor Code §226(a)
3. Penalties Pursuant to Labor Code §203
4. Violation of Business & Professions Code §17200 (Overtime)
5. Violation of Business & Professions Code §17200 (Meal)
6. Violation of Business & Professions Code §17200 (Rest)

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1 Plaintiff RAMONA RIVERA on behalf of herself and all others  
 2 similarly situated, complain of defendants, and each of them, as  
 3 follows:

## I

INTRODUCTION

4  
 5  
 6 1. This is a Class Action, pursuant to Code of Civil  
 7 Procedure §382, on behalf of plaintiff and a Proposed Class. The  
 8 Class consists of "Pharmaceutical Representatives." In this  
 9 pleading, the term "Pharmaceutical Representatives" shall mean all  
 10 persons who have been, are, or in the future will be employed by any  
 11 of the defendants during the statute of limitations period for the  
 12 particular claim for relief in which the term "Pharmaceutical  
 13 Representatives" is used (including time during which the statute  
 14 of limitation was or may have been tolled or suspended), in any job  
 15 whose title is or was referred to by any of the following titles,  
 16 and employees who performed substantially the same work as employees  
 17 with those titles (discovery may reveal additional titles and  
 18 employees that should be included):

- |  |                                      |
|--|--------------------------------------|
| 19 a. Sales Associate                          | 1. ACS Sales Specialist              |
| 20 b. Sales Representative                     | m. ACS Senior Sales Specialist       |
| 21 c. Professional Sales Representative        | n. Hospital Sales Representatives    |
| 22 d. Senior Professional Sales Representative | o. Hospital Sales Specialists        |
| 23 e. Hepatitis Sales Representative           | p. Oncology Sales Representatives    |
| 24 f. Hepatitis Sales Specialists              | q. Oncology Sales Specialists        |
| 25 g. Hepatitis Senior Sales Specialists       | r. Oncology Senior Sales Specialists |
| 26 h. Medical Center Sales                     | s. Virology Sales Representatives    |
| 27 i. Medical Center Sales Specialist          | t. Virology Sales Specialists        |
| 28 j. Medical Center Senior Sales              | u. Virology Senior Sales Specialists |
| k. ACS Sales Representative                    |                                      |

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1 Said "Pharmaceutical Representatives" were employed by defendant  
2 SCHERING-PLOUGH CORPORATION (hereinafter "SCHERING") and any  
3 subsidiaries or affiliated companies doing business in the State of  
4 California.

5 2. For at least four (4) years prior to the filing of this  
6 action and through to the present, defendants have had a consistent  
7 policy of failing to pay overtime to Pharmaceutical Representatives  
8 in violation of California state wage and hour laws. Plaintiff and  
9 the members of the Class were required to work more than eight (8)  
10 hours per day and/or forty (40) hours per week without receiving the  
11 proper overtime compensation.

12 3. For at least four (4) years prior to the filing of this  
13 action and through to the present, defendants have had a consistent  
14 policy of failing to provide Pharmaceutical Representatives an  
15 accurate itemized wage statement in violation of California state  
16 wage and hour laws.

17 4. Plaintiffs, on behalf of themselves and all Class Members,  
18 bring this action pursuant to Labor Code §§201, 202, 203, 226,  
19 226.7, 510, 558, 1194, 1197, and 1199, and California Code of  
20 Regulations, Title 8, Section 11010 seeking unpaid overtime,  
21 penalties, injunctive and other equitable relief, and reasonable  
22 attorneys' fees and costs.

23 5. Plaintiffs, on behalf of themselves and all Class Members,  
24 pursuant to Business & Professions Code §§17200-17208, also seek  
25 injunctive relief, restitution, and disgorgement of all benefits  
26 defendants enjoyed from their failure to pay overtime and rest and  
27 meal period compensation.

28 ///

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## II

PARTIESA. Plaintiffs

6. Venue as to each defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operate in the state of California under the name SCHERING-PLOUGH CORPORATION. The unlawful acts alleged herein have a direct effect on plaintiff and those similarly situated within the State of California and within Santa Clara County. Defendants employ numerous Class Members in Santa Clara County.

7. Plaintiff RAMONA RIVERA is a resident of California.

8. As an Senior Business Territory Manager, plaintiff was regularly required to:

(1) Work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensation at the rate of time and one-half (1 1/2) of the regular rate of pay;

(2) Work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked, and not being compensated one (1) hour of pay at her regular rate of compensation for each workday that a rest period was not provided;

(3) Work in excess of five (5) hours per day without being provided a meal period and not being compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders; and

(4) Work without being provided an accurate itemized wage

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1 statement as required by California Labor Code and Wage Orders.

2 **B. Defendants**

3 9. Defendant SCHERING-PLOUGH CORPORATION is a New Jersey  
4 corporation with its principal executive offices in New Jersey.  
5 Defendants employed plaintiff and similarly situated persons as  
6 Pharmaceutical Representatives within California and Santa Clara  
7 County.

8 10. The true names and capacities, whether individual,  
9 corporate, associate, or otherwise, of defendants sued herein as  
10 DOES 1 through 50, inclusive, are currently unknown to plaintiff,  
11 who therefore sues defendants by such fictitious names under Code  
12 of Civil Procedure §474. Plaintiff is informed and believes, and  
13 based thereon allege, that each of the defendants designated herein  
14 as a DOE is legally responsible in some manner for the unlawful acts  
15 referred to herein. Plaintiff will seek leave of court to amend  
16 this Complaint to reflect the true names and capacities of the  
17 defendants designated hereinafter as DOES when such identities  
18 become known.

19 11. Plaintiff is informed and believes, and based thereon  
20 allege, that each defendant acted in all respects pertinent to this  
21 action as the agent of the other defendants, carried out a joint  
22 scheme, business plan or policy in all respects pertinent hereto,  
23 and the acts of each defendant are legally attributable to the other  
24 defendants. Furthermore, defendants in all respects acted as the  
25 employer and/or joint employer of plaintiff and the Class.

26 **III**

27 **FACTUAL BACKGROUND**

28 12. Plaintiff and other Pharmaceutical Representatives have been

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1 improperly categorized as "exempt" employees by defendants and have  
2 not been paid, during the relevant liability period, the legal  
3 overtime rate of pay pursuant to Labor Code §510, Industrial Welfare  
4 Commission Wage Order 1-2001 and other applicable Wage Orders.

5 13. Plaintiff and the Class, and at all times pertinent hereto,  
6 have been non-exempt employees within the meaning of the California  
7 Labor Code, and the implementing rules and regulations of the IWC  
8 California Wage Orders.

9 14. During the hourly and overtime liability period, the named  
10 plaintiff and members of the Class were employed by defendants and  
11 erroneously paid strictly on a salary basis, without proper overtime  
12 compensation, despite working more than eight (8) hours per day  
13 and/or forty (40) hours per week.

14 15. During the rest and meal period liability period, plaintiff  
15 and the members of the Class were regularly required to work in  
16 excess of four (4) hours without being provided a rest period and  
17 were regularly required to work in excess of five (5) hours per day,  
18 without being provided a meal period.

19 16. Defendants did not fully compensate plaintiff and the Class  
20 for overtime wages during the overtime liability period and did not  
21 compensate for the failure to provide rest periods and meal periods  
22 during the rest and meal period liability period.

23 17. Defendants' requirement that plaintiff and the Class work  
24 all hours at the regular rate, work through meal and rest periods  
25 without paying legal compensation for failure to provide rest or  
26 meal periods during the liability periods was willful and  
27 deliberate.

28 18. Defendants willfully failed to pay one hours wages in lieu



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1 of rest and meal periods, when each employee quit or was discharged.

2 19. Defendants willfully failed to pay overtime wages to  
3 plaintiff and the Class at the time she/they quit or were  
4 discharged.

5 20. Defendants have failed to comply with Industrial Welfare  
6 Commission ("IWC") Wage Order 1-2001(7) by failing to maintain time  
7 records showing when the employee begins and ends each work period,  
8 meal periods, and total daily hours worked by itemizing in wage  
9 statements all deductions from payment of wages and accurately  
10 reporting total hours worked by plaintiff and the members of the  
11 proposed Class.

12 21. Plaintiff and the Class are covered by California Industrial  
13 Welfare Commission Occupational Wage Order Nos. 1-2001, 1-2000, 1-  
14 1998, California Industrial Welfare Commission in No. 1 (Title 8  
15 Cal. Code of Reg. §§11010).

16 IV

17 CLASS ACTION ALLEGATIONS

18 22. Plaintiff brings this action on behalf of herself and all  
19 others similarly situated as a Class Action pursuant to §382 of the  
20 Code of Civil Procedure. Plaintiff seeks to represent a class  
21 composed of and defined as follows:

22 All persons who are employed or have been employed  
23 by defendants in the State of California who, within  
24 four (4) years of the filing of this action, have  
worked as a Pharmaceutical Representative.

25 23. Plaintiff reserves the right under Rule 1855(b), California  
26 Rules of Court, to amend or modify the Class description with  
27 greater specificity or further division into subclasses or  
28 limitation to particular issues.



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1       24. This action has been brought and may properly be maintained  
2 as a class action under the provisions of §382 of the Code of Civil  
3 Procedure because there is a well-defined community of interest in  
4 the litigation and the proposed Class is easily ascertainable.

5       A. Numerosity

6       25. The potential members of the Class as defined are so  
7 numerous that joinder of all the members of the Class is  
8 impracticable. While the precise number of Class Members has not  
9 been determined at this time, plaintiff is informed and believes  
10 that defendants currently employ, and during the relevant time  
11 periods employed, as many as 250 Pharmaceutical Representatives.

12       26. Accounting for employee turnover during the relevant periods  
13 necessarily increases this number substantially. Plaintiff alleges  
14 defendants' employment records would provide information as to the  
15 number and location of all Class Members. Joinder of all members  
16 of the proposed Class is not practicable.

17       B. Commonality

18       27. There are questions of law and fact common to the Class that  
19 predominate over any questions affecting only individual Class  
20 Members. These common questions of law and fact include, without  
21 limitation:

22       (1) Whether defendants violated Labor Code §§510, 1194, 1197,  
23 and 1199, and Industrial Welfare Commission Wage Order 1-2001 and/or  
24 other applicable IWC Wage Order, by requiring plaintiff and the  
25 Class to work in excess of eight (8) hours in a workday and/or forty  
26 (40) hours in a workweek without compensating such employee at the  
27 rate of time and one-half (1 1/2) of such employee's regular rate  
28 of pay;

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1           (2) Whether defendants violated Labor Code §§226.7 and 512,  
2 Wage Order 1-2001 or other applicable IWC Wage Orders, and Cal. Code  
3 Regs., Title 8, Section 11010 by failing to provide daily rest  
4 periods to plaintiff and the Class for every three and one-half  
5 (3 1/2) hours or major fraction thereof worked and failing to  
6 compensate said employees one hours wages in lieu of rest periods;

7           (3) Whether defendants violated Labor Code §§226.7 and 512,  
8 IWC Wage Order 1-2001 or other applicable IWC Wage Orders, and Cal.  
9 Code Regs., Title 8, Section 11010 by failing to provide meal  
10 periods to plaintiff and the Class on days they worked in excess of  
11 five (5) hours or if waived meal period between five and six hours  
12 but worked over six hours with no meal period, and failing to  
13 compensate said employees one hours wages in lieu of meal periods;

14           (4) Whether defendants violated §226(a) of the Labor Code by  
15 failing to provide plaintiff and members of the class an accurate  
16 itemized wage statement;

17           (5) Whether defendants violated §§201-203 of the Labor Code  
18 by failing to pay overtime wages and/or compensation for denied rest  
19 periods and meal periods due and owing at the time that any Class  
20 member's employment with defendants terminated;

21           (6) Whether defendants violated §17200 et seq. of the Business  
22 & Professions Code by failing to pay legal overtime wages for  
23 assistant managers and/or failing to provide rest and meal periods  
24 without compensation to assistant managers or hourly restaurant  
25 employees;

26           (7) Whether plaintiff and the members of the Class are  
27 entitled to equitable relief pursuant to Business & Professions Code  
28 §17200, et. seq;

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1       C.   Typicality

2       28. The claims of the named plaintiff are typical of the claims  
3 of the Class. Plaintiff and all members of the Class sustained  
4 injuries and damages arising out of and caused by defendants' common  
5 course of conduct in violation of laws, regulations that have the  
6 force and effect of law and statutes as alleged herein.

7       D.   Adequacy of Representation

8       29. Plaintiff will fairly and adequately represent and protect  
9 the interests of the members of the Class. Counsel who represent  
10 Plaintiffs are competent and experienced in litigating large  
11 employment class actions.

12       E.   Superiority of Class Action

13       30. A class action is superior to other available means for the  
14 fair and efficient adjudication of this controversy. Individual  
15 joinder of all Class Members is not practicable, and questions of  
16 law and fact common to the Class predominate over any questions  
17 affecting only individual members of the Class. Each member of the  
18 Class has been damaged and is entitled to recovery by reason of  
19 Defendants' illegal policy and/or practice of failing to compensate  
20 Class Members at the legal overtime rates, denying Class Members  
21 rest and meal periods without legal compensation.

22       31. Class action treatment will allow those similarly situated  
23 persons to litigate their claims in the manner that is most  
24 efficient and economical for the parties and the judicial system.  
25 Plaintiffs are unaware of any difficulties that are likely to be  
26 encountered in the management of this action that would preclude its  
27 maintenance as a class action.

28    ///

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V

FIRST CAUSE OF ACTIONFAILURE TO PAY OVERTIME WAGES (Labor Code §§1194, 1199)

32. Plaintiff, on behalf of herself and all others similarly situated, repeats and realleges each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

33. By their policy of requiring Pharmaceutical Representatives to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating such employee at the rate of time and one-half (1 1/2), as alleged above, defendants willfully violated the provisions of Labor Code §1194.

34. As a result of the unlawful acts of defendants, plaintiff and the Class have been deprived of overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §1194.

VI

SECOND CAUSE OF ACTIONFAILURE TO FURNISH WAGE STATEMENTSIn violation of California Labor Code §226(e)

35. Plaintiff, on behalf of herself and all others similarly situated, repeats and realleges each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

36. California Labor Code §226(a) requires an employer, either semi-monthly or at the time of each payment of wages, to furnish each employee with a statement that accurately reflects, among other things, the total number of hours worked and the applicable hourly rates.

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1       37. Accordingly, pursuant to Labor Code §226(a), a California  
2 employer is required to maintain accurate records reflecting, among  
3 other things, the total hours worked and the applicable rates of  
4 each employee.

5       38. Defendants, as a pattern and practice, knowingly and  
6 intentionally failed and continue to fail to furnish Plaintiff and  
7 members of the Wage Statements Class with timely, itemized  
8 statements that accurately reflect, among other things, the total  
9 number of hours worked, and the applicable rate, in violation of  
10 Labor Code §226(a).

11       39. Defendants, as a pattern and practice, knowingly and  
12 intentionally failed and continue to fail to maintain accurate  
13 records reflecting, among other things, the total hours worked and  
14 the applicable rates of Plaintiff and the Wage Statement Class, in  
15 violation of Labor Code §226(a).

16       40. Plaintiff and the Wage Statement Class Members suffered  
17 injuries as a result of Defendants' failure to maintain records in  
18 that, without itemized statement showing all requisite information,  
19 they were misled by Defendants as to the correct information  
20 regarding various items including, but not limited to the total  
21 hours worked by the employee, new wages earned, and all applicable  
22 hourly rates in effect.

23       41. Pursuant to Labor Code §226(g), Plaintiff and the  
24 currently-employed members of the Wage Statements Class are entitled  
25 to injunctive relief to ensure Defendants' compliance with Labor  
26 Code §226.

27       42. Pursuant to Labor Code §226(e), Plaintiff and the Wage  
28 Statements Class are entitled to the greater of all actual damages

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1 or fifty dollars (\$50) for the initial violation and one hundred  
2 dollars (\$100) for each subsequent violation, up to four thousand  
3 dollars (\$4,000) per person.

4 43. Pursuant to Labor Code §§226(e) and (g), Plaintiff and the  
5 Wage Statements Class are entitled to attorney's fees and costs.

6 VII

7 THIRD CAUSE OF ACTION

8 WAITING TIME PENALTIES UNDER LABOR CODE §203

9 44. Plaintiff, on behalf of herself and all others similarly  
10 situated, repeats and realleges each and every allegation set forth  
11 in all of the foregoing paragraphs as if fully set forth herein.

12 45. Numerous members of the Class are no longer employed by  
13 defendants. They were either fired or quit defendants employ.

14 46. The defendant's failure to pay wages, as alleged above was  
15 willful in that defendants and each of them knew wages to be due but  
16 failed to pay them, thus entitling plaintiff and the Class to  
17 penalties under Labor Code §203, which provides that an employee's  
18 wages shall continue as a penalty until paid for a period of up to  
19 thirty (30) days from the time they were due.

20 47. Defendants have failed to pay plaintiff and others a sum  
21 certain at the time of termination or within seventy-two (72) hours  
22 of their resignation, and have failed to pay those sums for thirty  
23 (30) days thereafter. Pursuant to the provisions of Labor Code  
24 §203, plaintiff and the Class are entitled to a penalty in the  
25 amount of their daily wage multiplied by thirty (30) days.

26 ///

27 ///

28 ///

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## VIII

FOURTH CAUSE OF ACTIONUNFAIR COMPETITION PURSUANT TOBUSINESS & PROFESSIONS CODE §17200 (OVERTIME)

48. Plaintiff, on behalf of herself and all others similarly situated, repeats and realleges each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

49. This is a Representative Private Attorney General Action and Class Action for Unfair Business Practices. **RAMONA RIVERA** on her own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code §17200, et seq. The conduct of all defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to plaintiff, the general public, and the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure §1021.5.

50. Plaintiff is a "person" within the meaning of Business & Professions Code §17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

51. Business & Profession Code §17200, et seq. prohibits unlawful and unfair business practices.

52. Wage and hour laws express fundamental public policies. Providing employees with overtime is a fundamental public policy of this State and of the United States. Labor Code §90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to



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1 protect law-abiding employers and their employees from competitors  
2 who lower their costs by failing to comply with minimum labor  
3 standards.

4 53. Defendants have violated statutes and public policies.  
5 Through the conduct alleged in this Complaint, defendants, and each  
6 of them, have acted contrary to these public policies, have violated  
7 specific provisions of the Labor Code, and have engaged in other  
8 unlawful and unfair business practices in violation of Business &  
9 Profession Code §17200, et seq., depriving plaintiff, and all  
10 persons similarly situated, and all interested persons of rights,  
11 benefits, and privileges guarantees to all employees under law.

12 54. Defendants' conduct, as alleged hereinabove, constitutes  
13 unfair competition in violation of §17200 of the Business &  
14 Professions Code.

15 55. Defendants by engaging in the conduct herein alleged, by not  
16 paying proper overtime compensation either knew or in the exercise  
17 of reasonable care should have known that the conduct was unlawful.  
18 As such it is a violation of §17200 of the Business & Professions  
19 Code.

20 56. As a proximate result of the above mentioned acts of  
21 defendants, plaintiff and others similarly situated have been  
22 damaged in a sum as may be proven.

23 57. Unless restrained by this Court, defendants will continue to  
24 engage in the unlawful conduct as alleged above. Pursuant to  
25 Business & Professions Code this Court should make such orders or  
26 judgments, including the appointment of a receiver, as may be  
27 necessary to prevent the use or employment, by defendants, their  
28 agents or employees, of any unlawful or deceptive practice

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1 prohibited by the Business & Professions Code, and/or, including but  
2 not limited to, disgorgement of profits which may be necessary to  
3 restore plaintiff and the Class Members to the money defendants have  
4 unlawfully failed to pay.

5 IX

6 FIFTH CAUSE OF ACTION

7 UNFAIR COMPETITION PURSUANT TO

8 BUSINESS & PROFESSIONS CODE §17200 (MEAL)

9 58. Plaintiff, on behalf of herself and all others similarly  
10 situated, repeats and realleges each and every allegation set forth  
11 in all of the foregoing paragraphs as if fully set forth herein.

12 59. Defendants by engaging in the conduct herein alleged, by not  
13 providing proper meal breaks, either knew or in the exercise of  
14 reasonable care should have known that the conduct was unlawful.  
15 As such it is a violation of Business & Professions Code §17200.

16 X

17 SIXTH CAUSE OF ACTION

18 UNFAIR COMPETITION PURSUANT TO

19 BUSINESS & PROFESSIONS CODE §17200 (REST)

20 60. Plaintiff, on behalf of herself and all others similarly  
21 situated, repeats and realleges each and every allegation set forth  
22 in all of the foregoing paragraphs as if fully set forth herein.

23 61. Defendants by engaging in the conduct herein alleged, by not  
24 providing proper rest breaks, either knew or in the exercise of  
25 reasonable care should have known that the conduct was unlawful.  
26 As such it is a violation of §17200 of the Business & Professions  
27 Code.  
28

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RELIEF REQUESTED

WHEREFORE, plaintiff prays for the following relief:

1. For compensatory damages in the amount of plaintiff's and each Class Members' unpaid overtime.
2. For penalties pursuant to Labor Code §226(a) for all employees who were not provided an accurate itemized wage statement as required by the California Labor Code;
3. For penalties pursuant to Labor Code §203 for all employees who quit or were fired equal to their daily wage times thirty (30) days;
4. An award of prejudgment and post judgment interest;
5. An order enjoining defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing plaintiffs with overtime compensation and proper meal and rest breaks pursuant to Labor Code §512 and IWC 1-2001.
6. For restitution for unfair competition pursuant to Business & Professions Code §17200, including disgorgement or profits, in an amount as may be proven;
7. An award providing for payment of costs of suit;
8. An award of attorneys' fees; and
9. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of their claims by jury to the extent authorized by law.

DATED: September 28, 2007

KINGSLEY & KINGSLEY, APC

By: 

ERIC B. KINGSLEY  
ATTORNEY FOR PLAINTIFFS